

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

CITY OF HENDERSON, et al.

Plaintiffs,

vs.

SPAN SYSTEMS, INC.,

Defendant.

Case No. 2:12-cv-00780-JCM-NJK

**ORDER REQUIRING  
SUPPLEMENTAL BRIEFING**  
(Docket No. 29)

Pending before the Court is the Defendant's motion to stay proceedings pending resolution of an arbitration. Docket No. 29. Plaintiffs filed a response and Defendant filed a reply. Docket Nos. 32, 33. For the reasons discussed below, the Court hereby **ORDERS** the parties to file supplemental briefs no later than February 14, 2013.

Defendant requests that the Court issue a stay pursuant to section 3 of the Federal Arbitration Act, acknowledging that "the facts of this matter present a novel question of law [and] Span has not been able to find any case law on point with the facts of this matter." Reply at 3-4. Nor does Plaintiff's response appear to rely on case law that is on-point. *See* Response at 2 (distinguishing two cases based on the facts before the Court).

Before the Court wades into a novel issue of law, it appears that an alternative basis for ruling may exist.<sup>1</sup> Courts have inherent power to stay the cases before them as a matter of controlling their own docket and calendar. *See Landis v. North American Co.*, 299 U.S. 248, 254-55 (1936). The Ninth Circuit has found such a stay may be proper when arbitration proceedings are on-going:

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<sup>1</sup> The Court expresses no opinion at this time regarding the arguments already presented.

1 A trial court may, with propriety, find it is efficient for its own docket and the fairest  
2 course for the parties to enter a stay of an action before it, pending resolution of  
3 independent proceedings which bear upon the case. This rule applies whether the  
4 separate proceedings are judicial, administrative, or *arbitral* in character, and does  
5 not require that the issues in such proceedings are necessarily controlling of the  
6 action before it. In such cases the court may order a stay of the action pursuant to its  
7 power to control its docket and calendar and to provide for a just determination of the  
8 cases before it.

9 *Mediterranean Enterps., Inc. v. Ssangyong Corp.*, 708 F.2d 1458, 1465 (9th Cir. 1983) (emphasis  
10 added) (quoting *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863-64 (9th Cir. 1979)). In  
11 making such a ruling, the Court must consider a number of factors including, *inter alia*, whether the  
12 arbitration proceedings will be concluded within a reasonable time in relation to the urgency of the  
13 claims presented to the court. *See Leyva*, 593 F.2d at 864. Moreover, “if there is even a fair  
14 possibility that the stay . . . will work damage to some one else,” a stay may be inappropriate absent  
15 a showing by the movant of “hardship or inequity.” *See Landis*, 299 U.S. at 255.

16 The Court finds that the briefing does not adequately address the relevant issues or Ninth  
17 Circuit authority for a discretionary stay for the Court to make a ruling at this time. Accordingly,  
18 the Court orders the parties to file supplemental briefs no later than February 14, 2013 regarding:

- 19 (1) Whether the Court can order a stay of all claims before it based on its inherent authority  
20 without ruling on the parties’ “novel” arguments regarding the Federal Arbitration Act; and  
21 (2) Whether the relevant factors for such a stay militate in favor of staying this case.

22 IT IS SO ORDERED.

23 DATED this 6th day of February, 2013.

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NANCY J. KOPPE  
United States Magistrate Judge